

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  OFFICE OF CONSUMER ADVOCATE,  Complainant,  vs.  EXCEL TELECOMMUNICATIONS, INC.,  Respondent.	DOCKET NO. FCU-04-25
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued June 29, 2004)

On May 24, 2004, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty pursuant to Iowa Code § 476.103 (2003), asking that the Board review the proposed resolution in C-04-106, involving Excel Telecommunications, Inc. (Excel), and consider the possibility of assessing a civil penalty pursuant to Iowa Code § 476.103(4)"a." Based upon the record assembled in the informal complaint proceedings (which are a part of the record in this proceeding pursuant to 199 IAC 6.7), it appears the events to date can be summarized as follows:

On April 20, 2004, Mr. Steve Miller filed a complaint with the Board alleging that his long distance service was changed from MCI WorldCom, Inc. (MCI), to Excel without his authorization. Board staff identified the matter as C-04-106 and, pursuant to Board rules, on April 21, 2004, forwarded the complaint to Excel for response within ten days.

Excel responded to the complaint on May 5, 2004. Excel's response indicated that its internal records showed that Excel became the primary long distance service provider for the phone number in question on March 12, 2004, and that the party completing the third-party verification process identified himself as Steven Miller, the authorized decision maker for the phone number. Excel provided an electronic copy of the third-party verification recording. Excel's response also indicated that Mr. Miller's long distance service was deactivated within its billing system on April 21, 2004, and that adjustments had been made for all charges billed between March 12 and April 21, 2004.

On May 11, 2004, Board staff issued a proposed resolution describing these events. Board staff noted that after listening to a copy of the recording of the third-party verification, Mr. Miller disputed that his voice is on the recording. Board staff further noted that the date of birth provided on the recording is incorrect. Board staff concluded that it appears that the change in service was authorized by someone claiming to be Mr. Miller. Staff could not conclude whether the verification was inaccurate or the person on the recording misrepresented himself. Board staff

indicated that while Excel has done what is required by Board rules, it appears that Mr. Miller did not authorize the change in service.

Mr. Miller stated in his complaint that he had a freeze on his line. Board staff explained that it contacted Qwest Corporation (Qwest) to determine how the service was changed. Qwest's records showed that in 2002 Mr. Miller asked Qwest to remove the freeze to change the service to MCI and that a new freeze had not been requested for the account. The proposed resolution indicated that a full credit, including charges for long distance calls and change in carrier charges, would appear on Mr. Miller's May 13, 2004, statement from Qwest.

In its May 24, 2004, petition, Consumer Advocate asserts that a civil penalty should be imposed against Excel to deter future slamming violations. Consumer Advocate requests that the Board docket this complaint for a formal proceeding. Excel has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds that there is sufficient information to warrant further investigation in this matter. The Board will delay establishing a procedural schedule until July 23, 2004, and allow Excel an opportunity to respond to the allegations raised in Consumer Advocate's petition.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on May 24, 2004, is granted and docketed for formal proceeding.

2. Excel Telecommunications, Inc., is directed to file a response to Consumer Advocate's petition on or before July 23, 2004.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 29<sup>th</sup> day of June, 2004.